

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 817 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- No. 1      Yes      Nos. 2 to 5      No

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DHIRENDRABHAI NANJIBHAI MEHTA

Versus

INDUSTRIAL DEVELOPMENT BOI

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Appearance:

MR TUSHAR MEHTA for Petitioner  
MR YS LAKHANI for Respondent No. 1  
MR AS VAKIL for Respondent No. 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/03/98

ORAL JUDGEMENT

This revision application is directed against the order dated 8.3.1996 passed by the Civil Judge (S.D.), Porbandar, in Special Darkhast No. 11 of 1994 whereby the learned judge rejected the petitioner's objection that advocates fees for execution proceedings in accordance with the provisions of Sub-Rule VI, Rule 447 of the Gujarat High Court Rules must be calculated as 1/4

of the Advocates fees on the amount sought to be recovered which in the instant case comes to Rs. 521.25 and not Rs. 15,231.65.

2. The necessary facts are that respondent No. 1 Industrial Development Bank of India filed suit being Special Civil Suit No. 10 of 1988 in the court of learned Civil Judge (S.D.), Porbandar. The suit was decreed against defendants Nos. 1 and 2, however, the suit against defendant No. 3 Bank was dismissed. The court awarded cost payable to plaintiff Bank and respondent No. 3 State Bank of Saurashtra. The court awarded Rs. 76,202.15 as total cost of defendant No. 3. Out of the said amount of cost, Rs. 60,927.25 was the component of advocates fees, calculated as per Sub-rule I of Rule 447. Defendant No. 3 filed execution proceedings for recovery of said amount of cost only since nothing else was to be recovered by it. The executing court accepted the component of calculation of advocates fees in execution for Rs. 15,231.65.

3. It is contended by the learned counsel that the learned executing judge ought to have calculated the lawyer's fee as one fourth of the advocate fees to be charged as per the rates specified in sub-Rule(I) of Rule 447.

4. Chapter XXXI Rules 441 to 447 of Gujarat High Court Rules, 1993 provides for Taxation of Advocates fees. Rules for computing the advocates fees is provided under Schedule 'A' appended to said Rules of Taxation of Fees. For the ready reference Sub-Rule (I) and sub-Rules (VI) which have bearing on the controversy are extracted as follows:-

"Rules for computing the advocate's fee.

- (1) (a) In suits which decide on the merits the real dispute between the parties;
- (b) In appeals from decrees (including preliminary decrees) other than appeals from execution proceeding, which decide on the merit the real dispute between the parties;
- (c) In applications, proceeding or appeals which decide on the merits the real dispute between the parties under the -

Indian Succession Act, XXXIX of 1925,  
excepting applications or appeals falling  
under sub-clauses (2) and (3) of clause  
(e) of Rule IX.

(ii) Land Acquisition Act, I of 1894

- (d) In cases under sub-section (2) of Section 41

of the Arbitration 1940, which decide on the merits the real dispute between the parties; the amount of the Advocate's fees shall be computed on the amount or value of subject matter in the dispute in the suit, appeal, application or proceeding at the rates specified below:-

If the amount or value of the subject matter in dispute does not exceed Rs. 5000/- at 10 per cent.

If such amount or value exceeds Rs. 5000/- but does not exceed Rs. 10000/- on Rs. 5000/- as above and on the remainder at 7-1/2 percent.

If such amount or value exceeds Rs. 10000/- but does not exceed Rs. 20000/- on Rs. 10000/- as above and on the remainder at 5 per cent.

If such amount or value exceeds Rs. 20000/- but does not exceed Rs. 50000/- on Rs. 20000/- as above and on the remainder at 2 per cent.

If such amount or value exceeds Rs. 50000/- but does not exceed Rs. 100000/- on Rs. 50000/- as above and on the remainder at 1 per cent.

If such amount or value exceeds Rs. 100000/-, on Rs. 100000/- as above and on the above remainder at 1/2 per cent.

Exception :- The amount of advocate's fees in a suit, appeal, application or proceedings between landlord and tenant shall be calculated on the amount or value of the claim for the purposes of Court-fee and not on the amount or value of the claim for the purposes of jurisdiction.

Provided that the amount may, at the discretion of the court be calculated on the amount or value of the claim for the purposes of jurisdiction when the Court is of opinion, having regard to the labour involved in the preparation of the case, or to the complexity of the issue arising therein, that the higher rate of valuation is appropriate.

Explanation: A suit which is compromised or in which the claim is admitted shall be deemed to be decided on the merits for the purposes of this rule where such compromise or admission is made after the recording of the evidence in the suit

has commenced."

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"VI. In execution proceedings, the Advocate's fees to allowed shall subject to the provisions of Part XII be 1/4th of the fee calculated at the rates specified in Rule 1 on the amount or value of the relief or money claimed in application to execute the decree such fee shall be chargeable on the first application and on every subsequent contested application."

5. A reading of the rules shows that different scale of Advocates fees is provided for advocates fees in suit and advocates fees in execution proceedings. Advocates fees in a suit is to be calculated as per the formula provided under Sub-Rule I. In execution proceedings the fees admissible to advocate is 1/4 of the advocates fees calculated as per formula provided under sub-Rule I taking the value of the matter, "the amount sought to be recovered in execution".

6. In the instant case, taking the value of the subject matter of the suit, as per the formula provided under Sub-Rule I, it was calculated to a sum of Rs. 60,927.50. The execution is only of the cost amount i.e. Rs. 76,202.15. Therefore, for computation under sub-Rule VI shall not be straight way 1/4 of Rs. 60,927.50, but 1/4 of the fees calculated, taking the valuation of the subject matter of execution proceedings i.e. Rs. 76,202.15, as provided under sub-Rule I, which comes to Rs. 2,085.00, and 1/4 of which will come to Rs. 521.25. The learned judge has committed material illegality in exercise of its jurisdiction causing failure of justice, in calculating advocates fees in execution proceeding taking straight way 1/4 of the advocates fees i.e. Rs. 60,927.50 the fees awarded in the decree by the trial court.

7. In view of the aforesaid, the revision application is allowed and the order of the learned Civil Judge (S.D.), Porbandar dated 8.3.1996 is quashed and set aside. Petitioner's objection is upheld and the lawyer's fee in the execution proceedings is calculated as Rs. 521.25ps. The said amount has already been made in pursuance of the order of this court. Rule made absolute. Interim relief vacated.

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